

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

FRANKLIN COUNTY, IOWA.

**ADMINISTRATIVE
CONSENT ORDER**

NO. 2007-SW- 06

NO. 2007-AQ- 13

**TO: Jay Waddingham
Franklin County Engineer/
PO Box 118
Hampton, IA 50411**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Franklin County and the Iowa Department of Natural Resources (Department) in order to resolve solid waste disposal and open burning violations by Franklin County. Pursuant to this Order, Franklin County shall pay an administrative penalty in the amount of \$7,500.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jeremy Klatt
IDNR Field Office #2
2300 15th Street SW
Mason City, IA 50401
Ph: 641-424-9342

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Franklin County is a duly established county of the State of Iowa. Franklin County has established a department for the purposes of road and bridge maintenance and the issuance of certain permits. The County Engineer is the director of this department.
2. On December 20, 2006, the Department received a complaint alleging that Franklin County had demolished the county storage shed in Geneva, hauled the construction and demolition waste to a rural location, and illegally burned the construction and demolition waste. The complaint alleged that the waste had been burned on December 18 & 19, 2006.
3. On December 20, 2006, the Department contacted Jay Waddingham, Franklin County Engineer, who confirmed that the activities described in the complaint had in fact occurred.
4. On December 21, 2006, the Department inspected the former county shed site and the burn site. The removal of the building and burning of the resulting waste was documented through observations and photographs. Waste wire, aluminum, a light fixture, residue from snow fencing and other materials remained at the burn site.
5. A Notice of Violation was issued to Franklin County on December 29, 2006.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. ~~The Commission has adopted such rules at 567 IAC Chapters 100-121.~~
2. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.
3. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC Chapters 20-30 relating to air quality.
4. Rule 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and

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23.2(3) (exemptions). The materials burned in this case do not qualify for exemption or variance. The above facts disclose violation of this provision.

5. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants.

6. Pursuant to 40 CFR 61.145(b), prior to the commencement of demolition or renovation of a regulated structure, the owner or operator of the demolition or renovation activity shall thoroughly inspect the affected facility for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material. The above facts disclose a violation of this provision.

7. Pursuant to 40 CFR 61.145(b), the owner or operator of a demolition project shall provide the department with notice of intent to demolish or renovate the regulated structure. No such notice was received by the department as required by law.

V. ORDER

The Department orders and Franklin County agrees to pay an administrative penalty in the amount of \$7,500 at the time of execution of this Order.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations. Iowa Code section 455B.146 authorizes the assessment of ~~civil penalties of up to \$10,000 per day of violation for the air quality violations involved~~ in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:

- a. Economic Benefit. Franklin County has achieved an economic benefit from its

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illegal conduct. Costs avoided include disposal fees, labor, and hauling costs. The open burning of solid waste has resulted in cost avoidance. The failure to comply with asbestos regulations resulted in the avoidance of costs related to testing and possible abatement. The burning of solid waste typically reduces the volume of the waste by greater than 50%. The Department estimates that a total of 150 cubic yards of waste were illegally disposed of by Franklin County. Using an estimate of \$20 per cubic yard for hauling and disposal, a minimum of \$3,000 was saved by the County. Therefore, \$3,000 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The illegal open dumping of solid waste threatens the groundwater of the state. Open burning of solid waste releases toxic air emissions and can produce run-off that pollutes the surface and ground water of the state. The open burning of structures without conducting the required asbestos investigations threatens the release of a toxic substance and known carcinogen into the air. Such open burning may violate ambient air standards. Based on the above considerations, \$3,000 is assessed for this factor.

c. Culpability. Franklin County has a duty to be aware of the applicable prohibitions against open burning of solid waste. Based upon these factors \$1,500 is assessed for this factor.

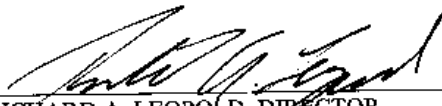
VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Franklin County. By signature to this Order, all rights to appeal this Order are waived.

~~VIII. NONCOMPLIANCE~~

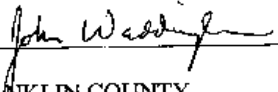
Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

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RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 11 day of
June, 2007



FRANKLIN COUNTY Franklin County
Engineer

Dated this 05 day of
May, 2007

Field Office #2; Jon Tack, VII, C.I.